

BOBBY LEE SMITH,)	
)	
Petitioner,)	
)	
v.)	No. 4:10CV1932 LMB
)	
STEVE LARKINS,)	
)	
Respondent.)	

This matter is before the Court upon its own motion. Petitioner submitted a letter to the Court requesting relief from his state court criminal conviction. In the interests of justice, the Clerk provisionally docketed the letter as a petition for writ of habeas corpus under 28 U.S.C. § 2254.

Petitioner is warned that if he consents to the classification of the instant filing as a motion under § 2254, any future § 2254 motions will be subject to the restrictions on filing second or successive motions. That is, petitioner will not be permitted to bring a second or successive § 2254 motion unless the United States Court of Appeals

for the Eighth Circuit certifies that the second or successive motion meets the requirements set forth in 28 U.S.C. § 2244(b)(3)(A). Furthermore, petitioner is warned that § 2254 motions are subject to a one-year limitations period. See 28 U.S.C. § 2244(d).

If petitioner consents to the characterization of the instant filing as a § 2254 motion, he must inform the Court of his decision, in writing, within thirty days of the date of this Order. Furthermore, if petitioner consents to the characterization, then he must file an amended § 2254 motion on the Court-provided form within thirty days of the date of this Order.

If movant opposes the characterization, or if petitioner fails to respond to this Order, then the Court will dismiss the action without prejudice and without characterizing the filing as a § 2254 motion.

Accordingly,

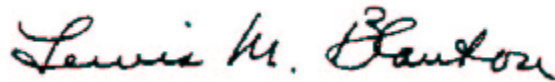
IT IS HEREBY ORDERED that petitioner shall have thirty (30) days from the date of this Order to formally consent, in writing, to the Court's characterization of the instant filing as § 2254 motion.

IT IS FURTHER ORDERED that if petitioner consents to the characterization, then he must file an amended § 2254 motion on the Court-provided form within thirty (30) days of the date of this Order.

IT IS FURTHER ORDERED that if petitioner does not consent to the characterization of the instant filing as a § 2254 motion, or if petitioner fails to timely respond to this Order, then the Court will dismiss the action without prejudice and without characterizing the filing as a § 2254 motion.

IT IS FURTHER ORDERED that the Clerk shall mail to plaintiff a copy of the Court's form petitioner for writ of habeas corpus under 28 U.S.C. § 2254.

Dated this 21st day of October, 2010.

A handwritten signature in cursive script, reading "Lewis M. Blanton", written in black ink.

LEWIS M. BLANTON
UNITED STATES MAGISTRATE JUDGE